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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924.

No. 317

DOULLUT & WILLIAMS COMPANY, INC.,
Appellant,

versus

THE UNITED STATES OF AMERICA,

Appeal from the District Court of the United States for the Eastern District of Louisiana.

BRIEF FOR APPELLANT.

E. HOWARD McCALEB,
Proctor for Appellant.

Montgomery-Andrus Printing Co., Inc. 127 Chartres Street, New Orleans, La.

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BRIEF FOR APPELLANT.

STATEMENT OF CASE.

This is an appeal from a final decree of the United States District Court, Eastern District of Louisiana, in Admiralty, dismissing appellant's libel brought against the United States, under provisions of Section 1251½A of Act of Congress of March 9, 1920, for damage done to certain piling or cluster of piling located in the Mississippi River, and owned and possessed by appellant, by the Steamship City of Elwood, a merchant vessel owned and operated by the United States (Rec., pp. 1, 4).

Appellants are owners of a certain piling or pile-cluster chiefly used by them for mooring their barges and pile drivers, which pile cluster is located approximately 100 to 150 feet distant from the shores of the Mississippi River (Rec., pp. 6, 7, 12, 13, 15). The cluster is fastened or driven into the bottom of the river in water over 15 feet deep (Rec., pp. 7, 12), and they are entirely surrounded by navigable water, boats navigating between the shores and the piling (Rec., p. 12). Copy of photographs of location of piling or pile cluster taken at low-water stage may be found inserted between pages 20 and 21 of the transcript of record. (See also Rec., pp. 14, 15.)

It is not controverted, in fact, the photograph shows, that this cluster has no connection, either actual, anticipated, temporary, prospective or of a permanent character with the shore or with any commerce on land or anything connected with land, or with the shores of the river. Nor is the testimony (of Captain Clason (Rec., pp. 6, 9), Captain Hall (Rec., pp. 10, 13), Captain George (Rec., pp. 16, 21), each of whom are experienced mariners) controverted, to the effect that the piling is an aid to navigation in foggy weather and on dark nights (Rec., pp. 6, 8, 9, 10, 11, 12, 17). Captain George testifies that it serves the same purpose as a spar-buoy in assisting pilots to navigate their vessels (Rec., p. 17). Nor is it controverted that the Steamship City of Elwood struck this cluster in broad daylight, injured and damaged it (Rec., pp. 16, 18, 19), in the sum of $401.32. (See admission, Rec., p. 5.)

By certificate of the District Judge the libel was dismissed on the sole ground that the Court had no jurisdiction as a Federal Court over the subject matter of the cause (Rec., p. 24). Wherefore this appeal (Rec., p. 22).

SPECIFICATION OF ERROR.

The District Court erred in holding that it had no jurisdiction as a Federal Court over the subject matter of the cause, and in dismissing this suit solely for want of jurisdiction.

ARGUMENT.

The jurisdiction is supported by *The Blackheath, 195 U. S., 361; The Raithmoor, 241, U. S., 166.* (See also *Hughes on Admiralty, 2nd Edition, page 202.)*

Jurisdiction has also been assumed by lower Federal Courts in the following cases:

1. Submarine cables resting on the bottom of navigable waters, notwithstanding connection of the ends with the shore. Postal Telegraph & Cable Co. v. P. S. Ross, 221 Fed., 105; The William Bailey, 50 C. C. A., 76; The Anita Berwind, 107 Fed., 721; The City of Richmond, 43 Fed., 85.
2. Temporary platform structure resting on girders sunk into the bottom of the Hudson River, and in use by private contractors in the removal of a rock, under cont act with the Government. The Senator Rice, 212 Fed., 960.
3. Injury to a person on a pontoon fastened to the shore by a cable, and used as a landing in connection with a ferry. The Mackinaw, 165 Fed., 351.
4. Floating boathouses moored to the shore by poles and chains, access to it from the shore being had over a gangway of planks. The M. R. Brazos, 10 Bev., 435, Fed. Cas., 9898.
5. Injury to a floating elevator which was anchored to and moved up and down upon wooden spuds embedded in the mud under navigable waters, where she was engaged in transferring grain from a schooner to canal boats. The Frank R. Gibson, 87 Fed., 364.

There was no connection with the shore as in *United States v. The Panoil, No. 139*, October Term, 1924, decided January 5, 1925.

Respectfully submitted,

E. HOWARD McCALEB,
Proctor for Appellant.

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BRIEF FOR APPELLANT.

STATEMENT OF CASE.

This is an appeal from a final decree of the United States District Court, Eastern District of Louisiana, in Admiralty, dismissing appellant's libel brought against the United States, under provisions of Section 1251½A of Act of Congress of March 9, 1920, for damage done to certain piling or clusters located in the Mississippi River, and owned and possessed by appellant, by the Steamship Galveston, a merchant vessel owned and operated by the United States (Rec., pp. 1, 4).

Appellants are owners of certain piling or pile clusters, chiefly used by them for mooring their barges and pile drivers, which pile clusters are located approximately 100 to 150 feet distant from the shores of the Mississippi River (Rec., pp. 6, 7, 12, 13, 15). The clusters are fastened or driven into the bottom of the river in water over 15 feet deep (Rec., pp. 7, 12), and they are entirely surrounded by navigable water, boats navigating between the shores and the piling (Rec., p. 12). Copy of photograph of location of piling or pile clusters taken at low-water stage may be found inserted between pages 20 and 21 of the transcript of record. (See also Rec., pp. 14, 15.)

It is not controverted, in fact, the photograph shows, that these clusters have no connection, either actual, anticipated, temporary, prospective or of a permanent character, with the shore or with any commerce on land or anything connected with land, or with the shores of the river. Nor is the testimony (of Captain Clason (Rec., pp. 6, 9), Captain Hall (Rec., pp. 10, 13), Captain George (Rec., pp. 16, 21), each of whom are experienced mariners) controverted, to the effect that the piling is an aid to navigation in foggy weather and on dark nights (Rec., pp. 6, 8, 9, 10, 11, 12, 17). Captain George testifies that they serve the same purpose as a spar-buoy in assisting pilots to navigate their vessels (Rec., p. 17). Nor is it controverted that the Steamship Galveston struck these pilings in broad daylight, injured and damaged them (Rec., pp. 16, 18, 19), in the sum of $519.92. (See admission, Rec., p. 5.)

By certificate of the District Judge the libel was dismissed on the sole ground that the Court had no jurisdiction as a Federal Court over the subject matter of the cause (Rec., p. 24). Wherefore this appeal (Rec., p. 22).

SPECIFICATION OF ERROR.

The District Court erred in holding that it had no jurisdiction as a Federal Court over the subject matter of the cause, and in dismissing this suit solely for want of jurisdiction.

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4. Floating boathouses moored to the shore by poles and chains, access to it from the shore being had over a gangway of planks. The M. R. Brazos, 10 Bev., 435, Fed. Cas., 9898.
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